

EXHIBIT H

Proffer of Testimony of Sherry Quirk

Sherry Quirk will testify by deposition, in accordance with the attached deposition excerpts, as follows: She was Vice President and General Counsel of TVA from February 2015 until after the Complaint was filed. She reported to William Johnson, TVA's CEO. She hired Concentric Energy Advisers to conduct the auction to sell Bellefonte and to negotiate the contract terms on behalf of TVA. Her legal team negotiated and recommended the deal presented to Johnson for his review and approval. There were two other prospective bidders for the Bellefonte site besides Nuclear Development ("ND").

During the contract negotiation process, ND requested that transfer of the construction permits from TVA to ND be a condition to closing the sales transaction. Quirk and her legal team recommended to the CEO that ND's request be rejected, and Johnson adopted the recommendation to reject ND's request.

In the contract signed with ND, TVA represented and warranted to ND, in order to induce ND to enter the contract, that Nuclear Regulatory Commission ("NRC") approval of the transfer of the construction permits from TVA to ND was not required in order to close the transaction. TVA's CEO approved this provision of the contract. After the lawsuit, Quirk testified that TVA's representation and warranty was "inaccurate."

The other two prospective bidders for the Bellefonte site were presented by TVA with the same purchase contract presented to ND. Quirk could not say that TVA would have required NRC approval of the transfer of the construction permits to Bellefonte buyers other than ND as a condition of closing the sale.

The first time that TVA indicated in writing that there might be an issue concerning transfer of the construction permits was November 9, 2018.

The TVA board of directors met on November 14, 2018, and were not presented by management with any issue concerning closing the sale of Bellefonte to ND.

Quirk will identify and testify to Exhibits 4, 17, 25, 26, 27, 28, 29, 30 and 31.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

NUCLEAR DEVELOPMENT LLC,)
)
)
Plaintiff,)
) Civil Action
vs.) Case Number
)
TENNESSEE VALLEY AUTHORITY,) No.
) 5:180cv-01983
) -LCB
Defendant.)

VIDEO RECORD & ORAL DEPOSITION OF
Sherry Quirk
Tuesday, October 29, 2019
8:57 a.m.
900 S. Gay Street
9th Floor
Knoxville, Tennessee 37902

Georgette H. Mitchell
Registered Professional Reporter
LCR-55 (TN)

1 what those requirements are, and he was, as far as I
2 know, more involved in the latter than -- excuse me --
3 the former than the latter.

4 Q. Were there any environmental issues which
5 would have prevented the closing of that transaction?

6 A. We determined that -- that we could go to
7 closing with the environmental record as it was.

8 Q. Who at TVA was responsible for the final
9 approval of all the terms and conditions of the
10 contract?

11 A. That would be Bill Johnson.

12 Q. Okay. Well, he said you were. Did you
13 read his testimony?

14 A. I did.

15 Q. Okay.

16 A. But as CEO, pursuant to the resolution
17 that the board passed, it actually was technically his
18 authority, and so those of us who supported him made
19 recommendations to him.

20 Q. Did you make recommendations to him?

21 MR. LEMBKE: That's a yes or no question,
22 Miss Quirk.

23 THE WITNESS: Yes.

24 BY MR. O'REAR:

25 Q. Regarding the terms and conditions of the

1 contract? The question is, did you make
2 recommendations to him regarding the terms and
3 conditions of the contract?

4 MR. LAMBKE: It's again a yes or no
5 question.

6 THE WITNESS: Yes, generally.

7 BY MR. O'REAR:

8 Q. When you said he was authorized by
9 resolution, what were you referring to?

10 A. When the board approved or declared the
11 Bellefonte site to be surplus, it passed a resolution
12 providing the CEO with the authority to move forward in
13 the sale of the site at auction.

14 (Exhibit 4 - Previously marked - Bates No.
15 TVABLN000002633 through 2634, Resolution.)

16 BY MR. O'REAR:

17 Q. Let me show you has been previously
18 marked as Exhibit 4. Is that the resolution that
19 you're referring to?

20 A. It appears to be, yes.

21 Q. Within the legal department, who worked
22 on the negotiations and review of the contract terms
23 before the contract was executed?

24 A. I believe that Cliff Beach was overseeing
25 that process and he was working with an outside

1 consultant firm, Concentric.

2 Q. Do you know what lawyers worked under Mr.
3 Beach on that project?

4 A. I believe it was Nick McCall, and as I
5 said I'm not sure whether Greg would still have been
6 there or not, but I don't know beyond that who was on
7 the team.

8 Q. Did the team have a name? Did that team
9 have a name?

10 A. I don't know that they had anything more
11 catchy than the Bellefonte team.

12 Q. Did Mr. Beach report to you in terms of
13 matters regarding the negotiation of the terms of the
14 contract?

15 A. Yes.

16 Q. Did you report to Mr. Johnson regarding
17 matters involving the negotiation of the terms of the
18 contract?

19 A. Yes, generally.

20 Q. Did you report to him with respect to any
21 specific provisions of the contract?

22 MR. LAMBKE: That's a yes or no question,
23 Miss Quirk.

24 THE WITNESS: Yes.

25 BY MR. O'REAR:

1 Q. Okay. And which ones?

2 MR. LAMBKE: I instruct you not to answer
3 that question. That would require disclosure of
4 attorney/client privilege material.

5 BY MR. O'REAR:

6 Q. What was the role of Concentric Energy
7 Advisors in this process?

8 A. We hired Concentric to help to conduct
9 the auction and to elicit interest in the site.

10 Q. Was Concentric involved in negotiating
11 the terms of the contract with Nuclear Development?

12 A. I don't know for certain, but I would
13 imagine they were.

14 Q. Was there a written contract with
15 Concentric that outlined the scope of it's work?

16 A. I'm certain there was.

17 Q. When was that contract entered into?

18 A. I don't recall.

19 Q. If the contract was signed as of
20 November 14, 2016, do you have any idea how much prior
21 to that, how much time prior to that there would have
22 been an agreement with Concentric, or when did they
23 begin being involved?

24 A. I would be guessing.

25 MR. LEMBKE: Objection to the form.

1 Compound question. Vague.

2 BY MR. O'REAR:

3 Q. Well, I was trying to ask the same
4 question two ways. Okay.

5 When did Concentric start working under
6 this contract?

7 A. I would be guessing if I gave you a time.

8 Q. Would it have been sometime in 2016?

9 A. I believe so, but I'm not sure.

10 Q. And did the process work where Concentric
11 would have communications with representatives of
12 Nuclear Development and they would take any questions
13 or issues to be decided to Mr. Beach for direction?

14 A. I don't know for certain.

15 Q. Did Mr. Beach ever bring to you any
16 particular issues involving negotiations with Nuclear
17 Development regarding the terms of the contract?

18 MR. LAMBKE: That's a yes or no question.

19 THE WITNESS: Yes.

20 BY MR. O'REAR:

21 Q. And did you make final decisions on those
22 terms?

23 A. No.

24 Q. Who would have made the final decisions?

25 A. The -- from my perspective as General

1 Counsel, my team would have recommended and negotiated
2 a deal that was then presented for the CEO's review.

3 Q. Would those recommendations have come at
4 the conclusion of the negotiation process in the form
5 of recommending the entire contract?

6 A. I believe so. I mean, there may have
7 been some terms that bubbled up before.

8 Q. Well, what terms bubbled up before?

9 MR. LEMBKE: I instruct you not to answer
10 that question. It would require you to disclose
11 attorney/client communications.

12 MR. O'REAR: I'm not asking her about
13 communications. I'm asking her what issues in the
14 negotiation bubbled up before the contract as a
15 whole was recommended to the CEO.

16 MR. LAMBKE: Well, but what you're asking
17 her what issues she communicated. By doing that
18 you're asking her what issues bubbled up that she
19 conveyed to Bill Johnson.

20 MR. O'REAR: Well, I didn't ask that.

21 That wasn't -- I did ask that earlier.

22 BY MR. O'REAR:

23 Q. But the question I'm asking you now is,
24 what issues bubbled up?

25 MR. LEMBKE: You can answer that

1 question.

2 THE WITNESS: One of our concerns -- well
3 our --

4 MR. LEMBKE: Hold it. I'm going to
5 instruct you not to disclose -- your -- discussing
6 your concerns would require you to disclose your
7 work product and that I instruct you not to
8 answer.

9 You should limit your answer here to just
10 a statement of issues that bubbled up from Nuclear
11 Development during the negotiations.

12 Do you understand my instruction?

13 THE WITNESS: Yes. The only issue that I
14 recall is the question of the period of time
15 between auction and closing.

16 BY MR. O'REAR:

17 Q. Concentric's work occurred before the
18 contract was entered into between TVA and Nuclear
19 Development, correct?

20 A. Correct.

21 Q. Did Concentric work with the other
22 prospective bidders regarding terms and conditions of
23 contracts with them?

24 A. Yes, as far -- I'm aware that they did.

25 Q. So they would have undertaken the same

1 exercise with respect to those prospective bidders as
2 they did with Nuclear Development, correct?

3 A. Correct.

4 Q. Do you know who those other prospective
5 bidders were?

6 A. I know of two. One was NextEra or some
7 NextEra connected company, and the other was an Indian
8 company whose name I just don't recall.

9 Q. Something like National Environmental
10 Services?

11 A. That sounds right, but I don't have a
12 specific recollection of it.

13 Q. And with respect to Mr. Beach's
14 involvement, he would have been involved with
15 Concentric on those prospective bidders just as he was
16 on Nuclear Development?

17 A. That's my understanding, yes.

18 Q. And I assume Concentric was paid a fee by
19 TVA for it's services, correct?

20 A. That's correct.

21 Q. And was Concentric paid out of the money
22 that Nuclear Development put up upon the execution of
23 the contract in 2016?

24 A. I don't know.

25 (Exhibit 1 - Previously marked - Contract.)

1 negotiations of the contract?

2 A. I believe her first name was Kari.

3 Q. Was it Kari O'Neil?

4 A. That sounds right.

5 Q. Do you know whether she was a lawyer or
6 not?

7 A. I don't believe so, but I'm not certain.

8 Q. Were you aware that during the
9 negotiation process that Mr. Larry Blust, who is seated
10 here next to me, made a request on behalf of Nuclear
11 Development to include a provision in the contract that
12 the transfer of the construction permits would be from
13 TVA to Nuclear Development, would be a condition of the
14 closing of the sales transaction?

15 A. I generally recall that, yes.

16 Q. And were you involved in that
17 consideration of that request at all?

18 A. I was involved in discussions with the
19 team over how to address that.

20 Q. And how was that decided?

21 MR. LEMBKE: Object to the form.

22 BY MR. O'REAR:

23 Q. Or what was decided?

24 MR. LEMBKE: Well, to the extent that is
25 calling for you to disclose the internal work

1 product of TVA, I instruct -- of TVA lawyers, I
2 instruct you not to answer that question.

3 THE WITNESS: I can tell you the ultimate
4 provision that emerged from -- with respect to
5 this issue, which is that there would be a
6 two-year period between the auction and closing
7 which was considered to be ample for all necessary
8 approvals.

9 BY MR. O'REAR:

10 Q. Who made the decision at TVA to deny the
11 request of Nuclear Development that transfer of the
12 construction permits be a condition of closing?

13 A. I don't understand your question.

14 Q. Who made the ultimate decision to deny
15 Mr. Blust's requests on behalf of Nuclear Development
16 that transfer of the construction permits be a
17 condition of closing the sales transaction?

18 A. The team negotiated a number of terms and
19 conditions, including this, made a recommendation that
20 the -- that I and the CEO, I recommend this to the CEO,
21 and as an entirety those terms were adopted or accepted
22 by the CEO.

23 Q. Were you aware that TVA made certain
24 representations and warranties in the contract in order
25 to induce Nuclear Development to enter into the

1 say.

2 BY MR. O'REAR:

3 Q. I direct your attention to section seven
4 of the contract before you, which is Exhibit 1. If you
5 would look to page eight.

6 Do you have that before you?

7 A. I do.

8 Q. And section seven is captioned TVA's
9 representation and warranties, correct?

10 A. That's correct.

11 Q. Then A, subsection A says what? What's
12 the preamble of section A say?

13 A. "To induce buyer to enter into this
14 agreement, TVA represents and warrants as follows."

15 Q. So the inducement language is in the
16 contract itself, correct?

17 A. It is.

18 Q. All right. And if you would direct your
19 attention to romanette seven under subsection 7A. Do
20 you see that?

21 A. Yes.

22 Q. Would you read that romanette seven into
23 the record, please.

24 A. "TVA has full right, power, and authority
25 to execute and deliver this agreement and to consummate

1 the purchase and sale transactions provided for
2 therein, and no authorization, consent or approval or
3 other order or action of or filing with any
4 governmental authority is required for the execution
5 and delivery by the TVA of this agreement or the
6 consummation by the TVA of the transactions
7 contemplated therein."

8 Q. Now, is the Nuclear Regulatory Commission
9 a governmental authority as that term is used in this
10 section?

11 A. I would assume so. I haven't checked the
12 definition, but I would assume so.

13 Q. If you would look to section -- just so
14 we can clarify that. If you would look to section nine
15 of the contract as it continues from page nine to page
16 ten.

17 Does the term -- is the term governmental
18 authority defined to include any federal regulatory or
19 administrative agency?

20 A. Yes.

21 Q. And would that include the Nuclear
22 Regulatory Commission?

23 A. I would assume so, yes.

24 Q. In fact, other than the Nuclear
25 Regulatory Commission, were there any other

1 governmental authorities that were contemplated when
2 TVA signed the contract with section 7A, romanette 7 in
3 it?

4 MR. LEMBKE: Miss Quirk, to the extent
5 that would require you to disclose attorney work
6 product, I instruct you not to answer the
7 question.

8 To the extent you can answer it without
9 disclosing attorney work product, you can go
10 ahead.

11 THE WITNESS: I am not aware of any
12 others.

13 BY MR. O'REAR:

14 Q. Now, was your recommendation for TVA to
15 accept or did you make a recommendation for TVA to
16 accept this particular representation that is set forth
17 in the contract --

18 MR. LEMBKE: Miss Quirk --

19 BY MR. O'REAR:

20 Q. Just a minute -- other than your
21 recommendation to the CEO that the contract be accepted
22 in general?

23 MR. LEMBKE: Miss Quirk, again I instruct
24 you to the extent that would require you to
25 disclose an attorney/client communication, I

1 instruct you not to answer it.

2 THE WITNESS: Could you state the
3 question again?

4 BY MR. O'REAR:

5 Q. Did you make a recommendation that TVA
6 accept this provision of the contract?

7 MR. LEMBKE: Same instruction.

8 THE WITNESS: As I said, I made a general
9 recommendation.

10 BY MR. O'REAR:

11 Q. To the CEO?

12 A. Yes.

13 Q. And he was the final decisionmaker?

14 A. He signed it, yes.

15 Q. Well, Aaron Nix signed it.

16 A. Oh, that's duly noted.

17 Q. Okay. But the final decisionmaker was
18 the CEO, Bill Johnson?

19 A. Yes.

20 Q. And Mr. Nix could not sign the contract
21 without Mr. Johnson's approval, is that correct?

22 A. Correct.

23 Q. Are you familiar with TVA's position in
24 this lawsuit now?

25 MR. LEMBKE: Miss Quirk, I instruct you

1 not to answer that question to the extent it would
2 require you to disclose attorney/client
3 communications or your work product.

4 THE WITNESS: I am generally familiar.

5 BY MR. O'REAR:

6 Q. Okay. Have you read the answer that was
7 filed by TVA in this case, the answer to the complaint?

8 A. A while ago, yes.

9 Q. Did you read TVA's motion to dismiss and
10 it's brief submitted in support of that motion?

11 A. A while ago, yes.

12 Q. Are you familiar with the fact that
13 currently TVA is taking the position in the lawsuit
14 that the transfer of the construction permits would
15 have been required before the closing in order to make
16 the closing legal?

17 A. Yes, I'm aware of that.

18 Q. And the transfer of the construction
19 permits would have required the approval of the
20 National Regulatory Commission (sic), correct?

21 MR. LEMBKE: Object to the form. Calls
22 for a legal conclusion, and again I instruct you
23 to the extent that it would require you --

24 MR. O'REAR: Well --

25 MR. LEMBKE: -- to the extent that would

1 require you to disclose attorney/client
2 communications or your work product, you shouldn't
3 answer it.

4 BY MR. O'REAR:

5 Q. Are you aware of TVA's position in this
6 case that the Nuclear Regulatory Commission must
7 approve the transfer of the construction permits from
8 TVA to Nuclear Development?

9 A. I'm aware, yes.

10 Q. Are you aware of TVA's position in this
11 lawsuit that that approval should have occurred before
12 the closing in order for the closing of the transaction
13 to be legal under the Atomic Energy Act?

14 A. Yes, I'm aware of that.

15 Q. Now, based on TVA's current position in
16 the lawsuit, is the representation and warranty made in
17 section 7-A-7 false, if you assume TVA's position is
18 correct in the lawsuit?

19 MR. LEMBKE: Object to the form. To the
20 extent that answer would require you to disclose
21 attorney/client communications or work product,
22 you shouldn't answer it, otherwise you can go
23 ahead.

24 THE WITNESS: I'm sorry. I'm going to
25 have to ask you to repeat.

1 BY MR. O'REAR:

2 Q. Okay. All right. I want you to take into
3 consideration the answers you've already given --

4 A. Yes.

5 Q. -- of your understanding of TVA's
6 position in the lawsuit. Based on TVA's position in
7 this lawsuit, is the representation made by TVA in
8 section 7 A romanette 7 false?

9 MR. LEMBKE: Same instruction.

10 THE WITNESS: Reading it here today? It
11 looks to me to be inaccurate.

12 BY MR. O'REAR:

13 Q. False?

14 A. Inaccurate, I would say.

15 Q. Incorrect?

16 MR. LEMBKE: Asked and answered.

17 BY MR. O'REAR:

18 Q. Do you contest the fact that the contract
19 provides that that representation was made by TVA to
20 induce Nuclear Development to enter into the contract?

21 MR. LEMBKE: Objection, asked and
22 answered. You can answer it again.

23 THE WITNESS: It's in the contract and
24 the language says what it says.

25 BY MR. O'REAR:

1 with the other group that I can recall.

2 Q. Are you familiar with a man by name of
3 Aaron Abadi with National Environmental Group?

4 A. I have seen his name. That's about all
5 that I know about him.

6 Q. You had no communication with him?

7 A. No.

8 Q. As far as you know?

9 A. No.

10 Q. Did either of those two groups express in
11 their intent to bid that they intended to construct and
12 operate a nuclear facility at Bellefonte?

13 A. Not as far as I'm aware.

14 Q. Do you know what they stated in their
15 letters of intent to bid about the purpose they were
16 going to use the property for?

17 A. I don't know what they stated in their
18 notice of intent to bid. I do know what NextEra
19 described in a meeting that they had with us.

20 Q. And what did they describe?

21 A. A combination of solar and battery cells.

22 Q. But not nuclear?

23 A. Not as -- no, no.

24 Q. If you assume that either of those two
25 companies would have been the winning bidder at the

1 auction, would TVA have required that the construction
2 permits that it held at Bellefonte be transferred to
3 those entities before the closing?

4 MR. LEMBKE: First, I object to the form
5 in that it calls for speculation. Second of all,
6 I instruct you not to answer the question to the
7 extent it would require you to disclose attorney
8 work product.

9 You can answer if you can subject to that
10 instruction.

11 THE WITNESS: Can you repeat, please?

12 BY MR. O'REAR:

13 Q. Okay. You've got to shorten these
14 objections.

15 If you assume either of those two groups
16 would have been the winning bidder at the auction,
17 would TVA have required the transfer of the
18 construction permits from TVA to either of those groups
19 as the winning bidder approved by the NRC prior to the
20 closing?

21 MR. LEMBKE: Same objection, same
22 instruction.

23 THE WITNESS: I'm not sure what we would
24 have done in a contract with them. It would be a
25 different set of circumstances.

1 might have been present.

2 Q. Do you know of anyone else present other
3 than Mr. Johnson at any meetings with Memphis in 2018?

4 A. I think from time to time that Justin
5 Maierhofer might have been present. There might have
6 been some times when John Thomas was present. I don't
7 recall specifically.

8 Q. Are you aware of any meetings with
9 Memphis where Mr. Johnson met with Memphis officials in
10 executive session?

11 A. I don't. I'm not aware. I don't recall.

12 Q. Did there come a point in time where TVA
13 decided that it wanted to extend the closing date from
14 November 14, 2018 to November 30, 2018?

15 A. Yes.

16 Q. And tell me about that.

17 A. Well, I'll tell you what Bill Johnson
18 articulated I think to Franklin Haney, which is that he
19 felt as if he had sat on, I think those were his words,
20 he had sort of deliberated over the extension request
21 for too long and felt as if he owed it to Nuclear
22 Development to give them a little bit more time as he
23 -- as he reviewed our situation.

24 Q. Was TVA -- decide to ask for that
25 extension?

1 A. I believe that TVA offered it.

2 Q. It was TVA's idea to extend the closing
3 from November 14 to November 30?

4 A. That's my recollection, yes.

5 Q. Wasn't the real reason for the request to
6 give TVA time to look at this issue illegality and
7 whether the construction permits needed to be
8 transferred before the closing?

9 A. Real reason?

10 Q. Yes, the real reason, not the reason you
11 heard that Mr. Johnson stated to Mr. Haney.

12 MR. LEMBKE: Well, Miss Quirk, to the
13 extent this would require you to reveal
14 attorney/client communications I'd instruct you
15 not to answer it.

16 But to the extent you can answer it
17 without doing that, go ahead.

18 THE WITNESS: I would say in our
19 conversations with Mr. Blust during this time we
20 were, as I recall, having conversations about the
21 legality or lack of legality of going forward, and
22 we were at that point not certain either way.

23 We were actually searching for a way to
24 go forward with the closing, and but we had not
25 yet completed our work there. However, it is a

1 fact that Mr. Johnson wanted more time to consider
2 this issue.

3 BY MR. O'REAR:

4 Q. Who is the person at TVA who first
5 questioned whether transferring Bellefonte prior to the
6 transfer of the construction permits would be illegal?

7 A. I believe that would be Chris Chandler.

8 Q. And when did that happen?

9 A. I'm not sure.

10 Q. How was the question raised within TVA?

11 MR. LEMBKE: Miss Quirk, to the extent
12 this would require you to reveal attorney/client
13 communications or work product, I instruct you not
14 to answer it.

15 If you can answer without doing that, go
16 ahead.

17 THE WITNESS: Without revealing
18 confidential information, we started looking hard
19 at it as we were looking at the question of going
20 to closing on the closing date, the original one
21 and as extended.

22 BY MR. O'REAR:

23 Q. Well, I asked you when. So would you
24 start looking hard at it before the 16-day extension
25 was entered into or after that?

1 MR. LEMBKE: Same instruction.

2 THE WITNESS: I don't know that I can
3 answer that without revealing confidential
4 information.

5 BY MR. O'REAR:

6 Q. When was Nuclear Development first
7 advised by TVA that TVA was looking at that issue?

8 A. I don't recall the exact date, but we
9 raised it as soon as we felt it was a germane and
10 pressing issue.

11 Q. And when was that?

12 A. I don't recall the exact date.

13 MR. O'REAR: That's for the witness.

14 MR. LEMBKE: Oh.

15 (Exhibit 17 - Bates No. TVABLN000002643, Email
16 from Clifford Beach dated November 9, 2018.)

17 BY MR. O'REAR:

18 Q. I direct your attention to Exhibit 17.
19 Are you familiar with that --

20 A. Yes.

21 Q. -- e-mail from Mr. Beach to Mr. Blust?

22 A. Yes, I am.

23 Q. And that's dated November 9, 2018,
24 correct?

25 A. That's correct.

1 Q. And you were copied on that along with
2 Chris Chandler?

3 A. Correct.

4 Q. And it attaches Mr. Beach's bullet points
5 which are captioned NRC License Transfer Requirements,
6 right?

7 A. Yes.

8 Q. Now, was this the first time TVA had sent
9 anything in writing to Nuclear Development about an
10 issue regarding the transfer of the construction
11 permits?

12 A. I believe that's correct. Chris Chandler
13 would or Cliff Beach would have a better -- better
14 sense of that.

15 Q. Who engaged the Pillsbury firm to look at
16 this question?

17 A. Well, it is my authority and decision to
18 engage any -- any law firm for TVA. So it would
19 ultimately have been my decision, but I believe that
20 Chris Chandler spoke with them about the engagement.

21 Q. And the engagement letter's addressed to
22 him, correct?

23 A. To?

24 Q. Chris Chandler. Not engagement. The
25 opinion letter is addressed to him, correct?

1 A. On this topic --

2 Q. Yes.

3 A. -- or generally?

4 Q. No, no, on this topic.

5 A. I don't know the answer to that question.

6 Q. And were you the one that made the
7 decision to engage them on this question?

8 A. Yes.

9 Q. Did the board of directors approve the
10 engagement of the Pillsbury firm to look at this
11 question?

12 A. No.

13 Q. Was the board of directors notified of
14 the engagement?

15 A. No.

16 Q. Do you recall if there was a Board of
17 Directors meeting on November 14, 2018?

18 A. I don't recall specifically, but I know
19 that we have a November board meeting each year.

20 (Exhibit 26 - Bates No. TVABLN00000038, e-mail
21 from Larry Blust dated November 30, 2018.)

22 BY MR. O'REAR:

23 Q. I've handed you what's been marked as
24 Exhibit 26. Can you identify that as an e-mail from
25 Mr. Blust to you and Mr. Beach and Mr. Chandler to Mr.

1 Matthews, Mr. Haney, Sr., Frank Haney, Bill McCollum
2 dated November 13/20/18? That's the top e-mail.

3 A. Yes.

4 Q. And did you receive that?

5 A. Yes.

6 Q. And the next e-mail beneath that is an
7 e-mail from you of the same date to that same group,
8 correct?

9 A. That's correct.

10 Q. And your e-mail says, "Larry, we are with
11 the board today and tomorrow and will back in touch on
12 Thursday. Sherry." Correct?

13 A. Correct.

14 Q. So you were with the board on
15 November 13, 2018, and the next day November 2014 --
16 November 14, 2018, correct?

17 A. Yes, that's what it looks like.

18 Q. Was there ever a discussion with the
19 board at a board member -- at a board meeting at this
20 time regarding the transfer of the construction permit
21 issue for Bellefonte?

22 MR. LEMBKE: Object to the form, vague.

23 And, Miss Quirk, to the extent any discussion with
24 the board would have been in a nonpublic session
25 and would have involved attorney/client

1 be a matter of public record.

2 (Exhibit 27 - Previously marked - Minutes of
3 Meeting of The Board of Directors Tennessee
4 Valley Authority, November 14, 2018.)

5 BY MR. O'REAR:

6 Q. All right. Let me show you what's been
7 marked as Exhibit 27, and ask you if you can identify
8 that as minutes of the meeting of the Board of
9 Directors of the TVA on November 14, 2018?

10 A. This appears to be the minutes of the
11 meeting.

12 Q. And you approved that by your signature
13 on the first page, correct?

14 A. That's correct.

15 Q. Approved the minutes, right?

16 A. Yes.

17 Q. Would you look through there and see if
18 there's any reference at all in these minutes to any
19 discussion of Bellefonte transfer of the construction
20 permits, the request for the extension --

21 MR. LEMBKE: You gave me two.

22 BY MR. O'REAR:

23 Q. -- or the question of whether you should
24 close on November 30, 2018?

25 MR. LEMBKE: For the record, this is 18

1 pages. So since he's asked you to read every word
2 on 18 pages take your time, Miss Quirk.

3 MR. O'REAR: I haven't asked her to read
4 every word, but she can if she wants to.

5 MR. LEMBKE: Well, you certainly have
6 asked her if in 18 pages of print whether there's
7 any reference to it anywhere in here so --

8 MR. O'REAR: Well, she can state from her
9 recollection, that's fine. But you're welcome to
10 review it.

11 THE WITNESS: I quickly reviewed this and
12 what was the question again?

13 BY MR. O'REAR:

14 Q. Is there any reference in those minutes
15 to Bellefonte, the transfer of the construction permits
16 at Bellefonte, the Nuclear Development request for
17 extension to May of 2019 to close the sale of
18 Bellefonte or the consideration of not closing the sale
19 to Bellefonte on November 30, excuse me, the sale of
20 Bellefonte on November 30, 2018?

21 A. I've read it quickly. I do see reference
22 to Bellefonte.

23 Q. What does it say?

24 A. It's a reference to accelerating the
25 amortization of the Bellefonte regulatory asset.

1 That's the only reference I've seen, but I've raced
2 through this at top speed.

3 Q. And that's a tax issue for TVA unrelated
4 to the --

5 A. It's an accounting issue.

6 Q. Accounting issue?

7 A. Yeah, we're not taxable.

8 Q. Okay. Unrelated to the Nuclear
9 Development transaction?

10 A. Yes, but based on a very, very quick
11 read.

12 Q. All right. So there was pending a
13 closing of the sale of Bellefonte for \$111 million as
14 to which over \$90 million was going to be paid on
15 November 30, 2018, correct?

16 A. I'm sorry. Can you say that again?

17 Q. It was pending at this time a closing
18 schedule on November 30, 2018, whereby Nuclear
19 Development would pay TVA over \$90 million as the
20 remaining balance due on the sale of Bellefonte,
21 correct?

22 A. I believe that's correct, yes.

23 Q. Okay. And the decision to not close that
24 transaction was never taken to the board of directors
25 at an official board meeting, was it?

1 A. No, it didn't need to be.

2 Q. But it was not, was it?

3 A. It was not --

4 MR. LEMBKE: Asked and answered.

5 BY MR. O'REAR:

6 Q. And Mr. Johnson made that decision
7 himself, correct?

8 A. I can't answer that.

9 Q. You don't know?

10 A. Well, chances are he and I would have
11 discussed it.

12 Q. He made the ultimate decision?

13 A. But ultimately, yes.

14 Q. So by making that decision, he decided
15 that TVA would not be receiving over a 100 million
16 dollars -- 90 millions dollars due on November 30,
17 and he did not take that to an official board meeting
18 for approval, did he?

19 A. He didn't. He didn't have to.

20 Q. When did you receive the Pillsbury
21 opinion letter?

22 A. I think I received it on the date that
23 shows on the letter itself. I believe that was the
24 28th, if I'm not mistaken. November 28th.

25 (Exhibit 22 - Bates No. TVABLN000008648, letter

1 THE VIDEOGRAPHER: The time is 11:23 and
2 we're going off the record.

3 (Recess taken.)

4 THE VIDEOGRAPHER: At 12:47 we're back on
5 the record.

6 MR. LEMBKE: Let me, before you start, as
7 I indicated to Mr. O'Rear off the record over the
8 lunch break we were able to check the privilege
9 log entry that had been identified by him on the
10 record, and we discovered there was an error on
11 the log and it is a straight attorney/client
12 privilege objection.

13 It should not have said prepared in
14 anticipation of litigation. So we will provide an
15 amended log making that correction.

16 MR. O'REAR: You're referring to the
17 February 2017 entry?

18 MR. LEMBKE: Correct.

19 BY MR. O'REAR:

20 Q. Okay. You ready?

21 A. Yes.

22 Q. What gave Bill Johnson as CEO the
23 authority to make the decision not to close a
24 111 million dollar transaction with Nuclear Development
25 without the board approval?

1 A. You're asking for my legal opinion?

2 Q. Just, yeah, what's your basis for
3 testifying earlier that he didn't have to have board
4 approval? What is the basis for that?

5 MR. LEMBKE: I'm going to object to the
6 extent it calls for a legal conclusion. You can
7 answer, if you can.

8 THE WITNESS: I will simply say it's in
9 the resolution in which the board authorized the
10 auction of this site.

11 BY MR. O'REAR:

12 Q. And are you referring to the resolution
13 which has been marked as Exhibit 4?

14 A. Yes.

15 (Exhibit 4 Bates No. TVABLN00002633 through 2634,
16 Proposed Board Resolution.)

17 BY MR. O'REAR:

18 Q. Okay. Can you get Exhibit 4 before you.
19 Can you direct me where in this resolution it provides
20 Mr. Johnson with the authority to make the decision not
21 to close the 111 million dollar transaction without
22 board approval?

23 A. In the first resolved clause.

24 Q. Okay. Would you read what you're
25 referring to?

1 I'm asking you what language are you
2 referring to which you believe authorizes Mr. Johnson
3 to make that decision without board approval?

4 MR. LEMBKE: Same instruction.

5 BY MR. O'REAR:

6 Q. You said the resolution which is
7 Exhibit 4, and I'm asking you what language in the
8 resolution?

9 A. And I have pointed --

10 MR. LEMBKE: Same instruction, same
11 objection.

12 THE WITNESS: I told you this resolve
13 clause and I'm -- that is as far as I'm
14 comfortable going.

15 BY MR. O'REAR:

16 Q. Is there any language in this resolution
17 which authorizes the CEO not to close the transaction
18 under specific conditions?

19 MR. LEMBKE: Objection, vague.

20 BY MR. O'REAR:

21 Q. Well, if you'll look with me to the next
22 paragraph, resolve further paragraph.

23 Does that paragraph authorize the CEO to
24 terminate the transfer process under certain
25 conditions?

1 A. It authorizes him to terminate if
2 environmental reviews cannot satisfactorily be
3 completed.

4 Q. Okay. And you have testified earlier
5 those environmental reviews were satisfactorily
6 completed, correct?

7 A. That's correct.

8 Q. There's nothing in this resolution that
9 says that the CEO has authority to terminate the
10 property transfer process if there's a question about
11 whether the construction permits must be transferred
12 before the closing, is there?

13 MR. LEMBKE: Objection, lack of
14 foundation. Misstates the document.
15 BY MR. O'REAR?

16 Q. Is there? Is there anything in this
17 resolution that specifically refers to the construction
18 permits and the timing of that transfer as it relates
19 to the closing?

20 A. That with many other details are not
21 specifically set forth.

22 Q. Is it your position that Mr. Johnson
23 could make that decision not to close the transaction
24 only if it is delegated, the power to do so, is
25 delegated to him by the Board of Directors of TVA?

1 MR. LEMBKE: Miss Quirk, I instruct you
2 not to answer the question to the extent it would
3 require you to disclose attorney/client
4 communications or your -- or your staff's or your
5 outside counsel's work product.

6 If you can answer it without doing so, go
7 ahead.

8 THE WITNESS: I don't think I can answer
9 it.

10 BY MR. O'REAR:

11 Q. Had TVA ever encountered that issue
12 before?

13 A. I'm not certain.

14 Q. Do you know?

15 A. Not that I'm aware.

16 (Exhibit 28 - Bates No TVABLN00000040, e-mail
17 from Sherry Quirk to Larry Blust and others dated
18 November 16, 2018.)

19 BY MR. O'REAR:

20 Q. I've handed you Exhibit 28. Can you
21 identify that as an e-mail that you sent to Larry Blust
22 on November 16, 2018?

23 A. Yes.

24 Q. And the second e-mail in that exhibit is
25 an e-mail from Mr. Blust to Clifford Beach with a copy

1 to you relating to the section of the Atomic Energy Act
2 that's referenced in the third e-mail of that e-mail
3 string, correct?

4 A. Yes.

5 Q. And your response was that you planned on
6 speaking with Bill on Monday, correct?

7 A. Yes.

8 Q. That would have been November the 19th,
9 2018?

10 A. Right.

11 Q. And Bill is Bill Johnson, correct?

12 A. That's correct.

13 (Exhibit 29 - Bates No. TVABLN00000042, e-mail
14 from Larry Blust to Sherry Quirk dated November
15 23, 2018.)

16 BY MR. O'REAR:

17 Q. Can you identify Exhibit 29 as an e-mail
18 sent from Larry Blust to you on November 28, 2018, at
19 4:13 p.m.?

20 A. Yes.

21 Q. And you would have received and
22 considered that e-mail, correct?

23 A. Yes.

24 (Exhibit 30 - Bates No. TVABLN000000660 through
25 661, e-mail from Larry Blust to Clifford Beach,

1 dated November 28, 2018.)

2 BY MR. O'REAR:

3 Q. If you would look at Exhibit 30. Can you
4 identify that as another e-mail sent to you by Larry
5 Blust on November 28, 2018, at 7:03 p.m., which was
6 directed to Clifford Beach but copied to you as well?

7 A. Yes.

8 Q. And as late as 7 p.m., two days prior to
9 the closing Mr. Blust is still trying to get an answer
10 from TVA about whether the transaction will close on
11 that Friday, correct?

12 A. Correct.

13 (Exhibit 31 - Bates No. ND_004950, e-mail from
14 Sherry Quirk to Larry Blust dated November 29,
15 2018.)

16 BY MR. O'REAR:

17 Q. If you will look at Exhibit 31. Is that
18 an e-mail dated November 29, 2018, at 9:09 p.m. from
19 you to Larry Blust attaching the November 29, 2018,
20 letter that we just referred to by you to him?

21 A. Yes.

22 Q. So it was not until the day before the
23 closing at 9:09 p.m. that TVA advised Nuclear
24 Development that it would not close the next day, is
25 that correct?

1 A. That's correct.

2 (Exhibit 25 - Bates No. TVABLN00006461 through
3 6464, e-mail and attachments from Sherry Quirk to
4 others dated November 30, 2018.)

5 BY MR. O'REAR:

6 Q. If you would look at Exhibit 25
7 previously marked at Mr. Johnson's deposition. Can you
8 identify that as an e-mail from Larry Blust to you on
9 Friday, November the 30th at 4:02 p.m., that you in
10 turn forwarded to others at TVA?

11 A. Yes.

12 Q. And did that e-mail attach Mr. Blust's
13 letter of November 30, 2018, that we see attached to
14 this exhibit?

15 A. Yes.

16 Q. Mr. Johnson's decision not to close the
17 transaction had already occurred before this letter
18 from Mr. Blust was received, is that correct?

19 A. I'm not --

20 Q. Well, your letter was sent 9:09 p.m. the
21 day before?

22 A. Yes.

23 Q. And it said we're not going to close the
24 transaction?

25 A. Right.

1 Q. And that was based on Mr. Johnson's
2 decision not to close the transaction, correct?

3 A. That is correct.

4 Q. So his decision was made before he
5 reviewed the position stated in Mr. Blust's letter
6 received the next day, correct?

7 A. That's correct.

8 Q. Before you sent your letter on November
9 the 29, 2018, stating that TVA would not close the
10 transaction, did TVA ever ask of the Nuclear Regulatory
11 Commission what it's position was on this issue?

12 A. I believe there were conversations
13 between Chris Chandler and NRC staff, but I don't know
14 the specifics of them.

15 Q. Do you know what the NRC staff said in
16 those conversations?

17 A. I don't know with particularity.

18 Q. Do you know generally?

19 A. I know that it did not give us comfort
20 that we could go forward and close.

21 Q. And what's that based on?

22 A. Based on the content of the conversations
23 as communicated to me at the time. There was no -- no
24 firm information coming from the NRC indicating that we
25 could close the transaction without violating the law.